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MATERIALS ON PROPERTY

PART III

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THE LANDLORD AND TENANT ACT
R.S.O. 1960, c. 206

. . .

Relation of landlord and tenant

2. The relation of landlord and tenant does not depend on tenure, and a reversion in the lessor is not necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging to that relation; nor is it necessary, in order to give a landlord the right of distress, that there is an agreement for that purpose between the parties.

. . .

NOTE; A section in the form of the present section 2 was added to the Act in 1896 (see 59 Vict., c. 42, s. 3). It replaced legislation enacted in 1895 (see 58 Vict., c. 26, s. 4) which provided:

> The relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties, and not upon tenure or service, and a reversion shall not be necessary to such relation, which shall be deemed to subsist in all cases where there shall be an agreement to hold land from or under another in consideration of any rent. . .

The 1895 Ontario legislation followed exactly the same wording as that found in section 3 of The Landlord and Tenant Amendment Act, Ireland, 1860, 23 and 24 Vict., c. 154, which legislation was restricted in its application to Ireland.

When the 1896 legislation was enacted it sparked comment from E. D. Armour writing in 15 Can. L.J. 245 in an article entitled The New Landlord and Tenant Act. Armour examined the purpose of the legislation applicable to Ireland and concluded (at pp. 254-5):

> Our exhaustive quotations serve to show that the circumstances preceding the passing of this Act were peculiar and that the Act totally failed as a remedy. The next enquiry naturally is, what are the circumstances in Ontario that we should begin experimenting with the rejected measures designed for the extra-Ulster Irish. . . . The circumstances are as different from those of the Irish as are the English circumstances. In England no such law is clamoured for, none is necessary. . . . It is in short nothing but legislative vivisection - experimenting upon a living healthy body politic and economic without regard to the unfortunate subject's feelings or the ultimate effect of the experiment upon its very life.

Armour argues that the legislation provided a new basis for the law of landlord and tenant in Ontario and could effect the result of eliminating all the ordinary incidents of the landlord and tenant relationship as developed theretofore, such as the landlord's right of distress in the absence of contract. (see e.g. ibid. at p.256).

In Harpelle v. Carroll (1895) 27 O.R. 240 the argument was put to Meredith C.J. that as the lease in question did not expressly give the lessor the right to distrain, as a result of the 1895 legislation, he could not legally distrain. Meredith C.J. rejected this argument holding:

> Now the section in question does not abolish the relation of landlord and tenant, and make the bargain by which one lets land to another a mere contract, but alters the manner of creating a long existing and well-known relation; it is hereafter not to be a matter depending on tenure or service, as it was under the feudal law, nor is a reversion to be necessary to the relation, as it was after the statute Quia Emptores, but it is to be deemed to be founded on contract express or implied. It was always, I take it, necessary that in a certain sense the relation should be fonnded on contract, because there must have been an agreement express or implied by the tenant to hold, and as to the return to be made to the landlord; but it was also necessary that he under whom the tenant agreed to hold, should be either lord of the feud or owner of the reversion in order that the relation of landlord and tenant should be complete; and all that the section does is to render unncessary hereafter the latter requisite, and to create the relation whenever, as it provides, there shall be an agreement to hold land from or under another "in consideration of any rent".
>
> It will be also observed that the section does not in terms, or I think by necessary implication, assume to interfere with cases where, as in this, the true relation of landlord and tenant exists. I mean by that where the lands are held in consideration of a rent of one who had the immediate reversion in them, or the rights incident to that relation; but, as I have endeavoured to point out, does away with the necessity of the person to whom the rent is reserved, having the immediate reversion in the lands in respect of which it is payable, in order to the creation of that relation.

The 1896 version of the legislation was judicially considered in Kennedy v. Agricultural Development Board (1926) 59 O.L.R. 374. Rose J. held that despite the theory that a charge under the Land Titles Act would not pass legal title to the chargee, did not preclude the chargee from distraining under the attornment clause contained in the charge. He held that the effect of the opening words of the section "the relation of landlord and tenant shall not depend on tenure" to mean "that it is not essential to the relationship that the tenant shall hold from or under the landlord . . . (and) there is no reason why a person who has a title in fee simple cannot by agreement become tenant to another for a stipulated term." (see p.377)

NOTE: The rights and duties of a landlord and tenant respecting the fitness of premises for human habitation and the maintenance of premises may be significantly affected by legislation in the particular jurisdiction.

In certain circumstances, the medical officer or local board of health is authorized to require the owner or occupier of premises on which a nuisance exists to abate it and to execute such works and do such things as may be necessary for that purpose. (The Public Health Act, R.S.O. 1960, c. 82). Any house or part of a house "so overcrowded as to be injurious or dangerous to the health of the inmates" is deemed to be a nuisance within the meaning of the Act. (See ibid., section 83(h).)

It also provides that where the owner or occupier of any premises in which a nuisance exists fails to abate it, the medical officer of health or sanitary inspector may enter the premises and take such steps as may be necessary to abate it. The costs of abating the nuisance are recoverable from both the owner and occupier for the time being of the premises. The occupier is authorized to deduct any money recovered or collected from him that, "as between him and the owner, the latter ought to pay" out of the rent. (See ibid., section 92(1) - (4).)

The Act does not purport to allocate responsibility for the cost of abatement to either the owner or the occupant. It leaves the allocation to be made in accordance with the common law or by agreement between the owner and occupant. In the case of a lease, it is black letter law that absent an agreement to the contrary, a landlord has no obligation to repair enforceable by the tenant. This is so even if the tenant is not liable to the landlord for the particular items of disrepair. Accordingly, in such a case, if the tenant pays the costs of abatement under section 92 of the Act, there is authority that he will not be entitled to deduct it from the rent because it is not an amount which the landlord is obligated in law to the tenant to pay. (See Parks v. Hammond, [1948] O.W.N. 383.)

For a number of years, under the authority of Private Acts, the City of Toronto has had power to pass by-laws for fixing a standard of fitness for human habitation. (See S.O. 1936, c. 84, s. 6 and 7 as amended.) By-law 22554 is the most recent exercise of this power. It was enacted on July 12, 1965, and contains detailed standards dealing with the fitness of dwellings for human habitation.

In March, 1967, the Private Bills Committee of the Legislative Assembly reported an amendment to this legislation to the House. Under it, Toronto has petitioned for power to pass by-laws:

(a) For providing standards for dwellings or any class or classes thereof within the municipality or within any defined area or areas and for prohibiting any person from using, permitting to be used, renting or offering to rent any such dwelling that does not conform to the standards;

(b) For preventing the overcrowding of dwellings or any class or classes thereof within the municipality or within any defined area or areas thereof by limiting the number of persons who may inhabit a dwelling unit and who may use a room for sleeping purposes and for prohibiting any person from using, permitting to be used, renting or offering to rent any dwelling in violation thereof;

(c) For requiring the owner of any dwelling and to the extent that he is made responsible by the lease or agreement under which he occupies the property the occupant thereof to repair and maintain the dwelling in accordance with the standards or demolish the whole or any part of the dwelling . . .

The purpose of by-laws passed under such legislation is not only to bolster the provisions of the Public Health Act respecting fitness of dwellings for habitation but also to promote the conservation of dwellings and so inhibit urban blight.

The Planning Amendment Act, 1964 (S.O. 1964, c. 90, s. 4) authorizes municipalities generally to enact by-laws respecting the standards of maintenance and occupancy of residential properties, if there is in effect in the particular municipality an official plan which includes provisions relating to housing conditions. Like the proposed City of Toronto Act referred to above, a by-law passed under this legislation cannot allocate financial responsibility to the landlord or the tenant. The allocation will be effected either by the lease or by the common law.

In contradistinction, the English Housing Act(1936 (Imp.), c. 51, s. 2(1)) provides that in any contract for letting for human habitation a house at a rent not exceeding £40, in the case of a house situate in the administrative county of London and £26, in the case of a house situate elsewhere, there shall be implied a condition that the house is, at the commencement of the tenancy and an undertaking that the house will be kept by the landlord during the tenancy, in all respects reasonably fit for human habitation.